



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0935]

RIN 1625-AA00, 1625-AA11, and 1625-AA87

Regulated Navigation Areas and Limited Access Areas; Waterway Management of Apra Harbor, Guam

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise and consolidate existing regulated navigation areas, security zones and safety zones currently in place in Apra Harbor, Guam. This action is intended to replace a number of redundant, potentially confusing and outdated navigation regulations with a cogent regulatory framework. The goal of this rulemaking is to better meet the needs of the community today and help ensure the safe and efficient use of the harbor by clarifying and streamlining, thereby reducing vessel operator confusion while transiting the waters of Apra Harbor, Guam.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Requests for public

meetings must be received by the Coast Guard on or before
[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL
REGISTER].

ADDRESSES: You may submit comments identified by docket
number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR

FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Terry Rice, Fourteenth Coast Guard District, U.S. Coast Guard; telephone (808) 535-3264; email terry.l.rice1@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins,

Program Manager, Docket Operations, telephone (202-366-9826 or 800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
ESQD	Explosive Safe Quantity Distance
FR	<i>Federal Register</i>
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area
§	Section

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully

transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2013-0935 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2013-0935 in the "SEARCH" box and click "SEARCH." Click on Open

Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not plan to hold any public meetings related to this NPRM. However, you may submit a request for a public meeting. Your request for must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

Navigational regulations of Apra Harbor have been in place in various forms dating back to the era of U.S. Navy administration of Guam. Some of the regulations predate the promulgation of the Ports and Waterways Safety Act of 1972, were initially included in 33 CFR parts 127 and 128, and subsequently re-codified in 33 CFR part 165 on July 8, 1982 as part of a regulatory reorganization effort. The regulations in part 165 were subsequently amended in 1986, 1990, 1996, 1998 and 2003. Between 1972 and 2003 four Regulated Navigation Areas, three security zones and two safety zones were created and/or amended. One of the security zones was subsequently removed, another changed to a safety zone, and an additional safety zone created.

Apra Harbor safety zone regulations in 33 CFR 165.1401 were last amended in 1990 (55 FR 18725, May 4, 1990). These zones were established as security zones in 1972 (37 FR 10800, 31 May 1972), amended in 1975 (40 FR 1016, Jan. 6, 1975), codified in 33 CFR 127.1401 (a) and (b) in 1982 as part of a regulatory reorganization effort (47 FR 29569, 29667, July 8, 1982), and were subsequently disestablished and re-established as safety zones in 1990 (55 FR 18725, May 4, 1990).

Apra Outer Harbor regulated navigation area regulations in 33 CFR 165.1402 were established by 33 CFR part 165 (47 FR

296660, July 8, 1982), and amended in 1996, and subsequently again in 1998 (63 FR 35533, June 30, 1998).

Apra Outer Harbor regulated navigation area regulations in 33 CFR 165.1404 were first established in 33 CFR part 127 in 1972 (37 FR 10801, May 31, 1972). They were moved to 33 CFR part 165 in 1982 (47 FR 29569, July 8, 1982), and amended in 1996 (61 FR 33660, June 28, 1996; and subsequently in 1998 (63 FR 35524, June 30, 1998).

Apra Harbor Security Zone C in 33 CFR 165.1404 was promulgated in 1990 (55 FR 18724, May 4, 1990).

Regulated Navigation Areas and Security Zones regulations in 33 CFR 165.1405 regarding Designated Escorted Vessels-Philippine Sea and Apra Harbor Guam (including Cabras Island Channel) were established in 2003 (68 FR 4383, Jan. 29, 2003).

C. Basis and Purpose

The legal *basis* for this rulemaking is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C 1231; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 160.5; and Department of Homeland Security Delegation No. 0170.1

Currently there are four Regulated Navigation Areas (RNA), one security zone and two safety zones within and approaching Apra Harbor. These regulations, included in 33 CFR 165.1401, 1402, 1404 and 1405, while intended to improve

the safety and security of Apra Harbor and the mariners operating therein, are potentially confusing, overlapping, and do not adequately address current needs. The *purpose* of this rulemaking is to simplify the current regulations, taking into account relevant safety and security navigational requirements for the waters of Apra Harbor, including approaches to the Harbor. This proposed rulemaking would create a regulatory scheme that ensures the needs of all stakeholders are addressed in a concise, understandable format through consolidation of the regulated navigation areas and rationalization of limited access areas (safety or security zones).

A *regulated navigation area* is a water area within a defined boundary for which regulations for vessels navigating within the area have been established. See 33 CFR 165.10.

A *safety zone* is a water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels. It may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. See 33 CFR 165.20.

A *security zone* is an area of land, water, or land and water which is so designated by the Captain of the Port or District Commander for such time as necessary to prevent

damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States. See 33 CFR 165.30.

D. Discussion of Proposed Rule

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) requesting comments on this subject on January 10, 2014 (79 FR 1789) and held two public meetings on January 22, 2014, at Port Authority Guam. Three comments were received. One comment requested that pre-notification be the only requirement imposed on commercial vessels transiting Apra Harbor safety zones. While the proposed regulations cannot guarantee admission to a safety zone, the Captain of the Port supports the need for vessels to be able to transit the harbor and the proposed regulations include a system to allow vessels to contact the COTP to arrange transit through the regulated areas to the maximum extent possible. A comment from a yacht club representative asked general questions regarding the definitions of the terms "safety zone" and "security zone," which are included in this preamble. Comments provided by the Port of Guam, and Matson Navigation were supportive of reducing the restrictions on navigation.

Having considered all comments received on the ANPRM, the Coast Guard proposes to:

- Revise 33 CFR 165.1401 by:
 - o Removing the safety zone around Wharf H as the wharf is no longer used for explosives cargo handling on a regular basis and removing Wharf H terminology in the special regulation paragraph, as it no longer applies.
 - o Expanding and re-designating Naval Wharf Kilo as Safety Zones A and B to address the explosive safe distances, required by increasing volumes of explosive cargoes handled by the wharf, while assuring operational flexibility to maritime operators under varying cargo load conditions and their explosive arcs. The activation and enforcement of Safety Zone A will be visually indicated by a red (BRAVO) flag and a "SAFETY ZONE A" sign displayed at Naval Wharf Kilo. The activation and enforcement of Safety Zone B will be visually indicated by a red (BRAVO) flag and a "SAFETY ZONE B" sign displayed at Naval Wharf Kilo.
- Remove 33 CFR 165.1402 because:
 - o The Regulated Navigation Area (RNA) designated in paragraph (a) is redundant and less precise than a subsequent RNA addressing the area, 33 CFR 165.1405 (a)(1) and (2), that was made effective January 29, 2003 (68 FR 4383, Jan. 29, 2003).
 - o The existing § 165.1402(b) regulations are outdated, concurrently addressed by Coast Guard anchorage regulation 33

CFR 110.238, and local government harbor regulations.

- Amend 33 CFR 165.1405 by:
 - o Removing the words "(including Cabras Island Channel)" from the section heading,
 - o Removing paragraph (a)(4) because Cabras Island Channel is already encompassed by paragraph (a)(2), Apra Harbor.
 - o Revising paragraph (a)(2) by replacing a reference to "Apra Harbor" with "Apra Outer Harbor." This is appropriate because the current regulation is redundant in addressing the waters of Inner Apra Harbor that are restricted by existing U.S. Army Corps of Engineers regulation 33 CFR 334.1430.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rulemaking will not adversely impact the economy or a segment of the economy in Guam, interfere with another agency, alter any entitlements, grants, user fees, or loans, or raise a novel or controversial question of law or policy. This rulemaking is intended to streamline the current regulations in place, actually decreasing the burden on waterway users. Further, although the intention is to modify expand the safety zones around Naval Wharf Kilo, traffic would be still permitted to pass through the zone with the permission of the Captain of the Port. In fact, providing two zones also limits the burden on the mariner, allowing for a closer approach to Naval Wharf Kilo because when the Explosive Safe Quantity Distance (ESQD) is decreased only Safety Zone A will be enforced.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is intended to streamline the current regulations in place, actually decreasing the burden on certain small entities and waterway users. Further, although the intention is to expand the safety zone around Naval Wharf Kilo, traffic would be still permitted to pass through the zone with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the

person listed in the FOR FURTHER INFORMATION CONTACT, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks

and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the consolidation and rationalization of existing Apra Harbor navigation regulations. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165---REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U. S. C. 1231; 46 U. S. C. Chapter 701, 3306, 3703; 50 U. S. C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of

Homeland Security Delegation No. 0170.1.

2. Revise § 165.1401 to read as follows:

§ 165.1401 Apra Harbor, Guam - safety zones.

(a) Location. (1) The following is designated Safety Zone A: The waters of Apra Outer Harbor encompassed within an arc of 1,000 yards radius centered at the center of Naval Wharf Kilo, located at 13 degrees 26'44.5" N and 144 degrees 37'50.7" E. (Based on World Geodetic System 1984 Datum).

(2) The following is designated Safety Zone B: The waters of Apra Outer Harbor encompassed within an arc of 1,400 yards radius centered at the center of Naval Wharf Kilo, located at 13 degrees 26'44.5" N and 144 degrees 37'50.7" E. (Based on World Geodetic System 1984 Datum).

(b) *Special regulations.* (1) Safety Zone A, described in paragraph (a) of this section, will only be enforced when Naval Wharf Kilo, or a vessel berthed at Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night, accompanied by a "SAFETY ZONE A" sign.

(2) Safety Zone B described in paragraph (a) of this section will only be enforced when Naval Wharf Kilo, or a vessel berthed at Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night, accompanied by a "SAFETY ZONE B" sign.

(3) Under general regulations in § 165.23, entry into the

zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Guam.

§ 165.1402 [Removed]

3. Remove § 165.1402.

4. In § 165.1405, remove paragraph (a)(4), and revise the section heading and paragraph (a)(2) to read as follows:

§ 165.1405 Regulated Navigation Areas and Security Zones;
Designated Escorted Vessels-Philippine Sea and Apra Harbor,
Guam, and Tanapag Harbor, Saipan, Commonwealth of the Northern
Mariana Islands (CNMI).

(a) * * *

(2) All waters from surface to bottom of Apra Outer Harbor, Guam, shoreward of the COLREGS Demarcation line as described in 33 CFR part 80.

* * * * *

Dated: September 4, 2014.

C. B. THOMAS,
Rear Admiral, U.S. Coast Guard,
Commander, Fourteenth Coast Guard District.

[FR Doc. 2014-22428 Filed 09/18/2014 at 8:45 am; Publication
Date: 09/19/2014]